
OPINION OF THE PUBLIC ACCESS COUNSELOR

ELVIN E. FOWL II,
Complainant,

v.

WAYNE COUNTY GOV'T,
Respondent.

Formal Complaint No.
18-FC-145

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging that Wayne County Government violated the Access to Public Records Act.¹ Attorney Ronald L. Cross filed an answer on behalf of Wayne County. In accordance with Indiana Code Section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on December 28, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This complaint involves a dispute between a former employee and Wayne County Government over the disclosure of time sheet records of another public employee.²

On August 31, 2018, Elvin E. Fowl, II (“Complainant”) filed a public records request with Wayne County seeking the following:

The work hours for the period beginning 1 May 2018 and ending 31 Aug 2018 by week for Veterans Service Officer employee Pete McDaniel to include day, start time, lunch start time, lunch return time, and end of day clock out.

The County acknowledged the request in writing the same day. On October 8, 2018, as part of a larger response to Fowl’s 19 pending records requests, the County denied the request in accordance with APRA’s discretionary exception for the personnel files of public employees.³

A week later, Fowl submitted a nearly identical request seeking the following:

² Complainant also filed a complaint over the nondisclosure of the same public employee’s DD-214 Veteran’s Discharge information. As the County has previously noted, The Privacy Act of 1974 (5 U.S.C. 552a) prohibits the disclosure of this information to a non-family member. Indiana Code Section 5-14-3-4(a)(3) prohibits the release of records declared confidential by Federal Law. This Office does not regulate compliance with Indiana Code Section 10-17-1-9(c)(1), which requires a county to retain a copy of a DD-214. All that matters is that the record is non-disclosable and not part of the APRA usurps that Federal provision.

³ Ind. Code § 5-14-3-4(b)(8).

Documents relating to payroll and timekeeping for employee Pete McDaniel for the specific period of 29 May 2018 to 1 October 2018, to include date, start time, lunch start time, lunch return time, and end of day clock out. These items exist in the payroll system and not the personnel [file] of the employee. Therefore, should not be denied again.

The County acknowledged the request on October 18, 2018. Fowl requested a status update on the request from the County on November 26, 2018. The next day, the County denied the request again for the same reason as it did previously.

Fowl filed a formal complaint with this office regarding the denial of access to the hourly time records on December 28, 2018. In sum, he contends the denial constitutes a violation of APRA.

Wayne County Government denies that nondisclosure of the records constitutes an APRA violation. The County asserts that the hourly time records, while in existence and under the control of the County, are part of the personnel records of the particular employee; and thus, excepted from disclosure at the discretion of the agency in accordance with Indiana Code Section 5-14-3-4(b)(8). Additionally, the County contends that the time records are not included in the listing of records that are an “exception to the exception” found at Indiana Code Sections 5-14-3-4(b)(8)(A) to (C).

The County maintains that the content of a document determines whether it can reasonably be considered to be a document that is part of a “personnel file” of a public employee—not the location or name ascribed to a particular repository, file or database maintained by the public agency employer in which the document may be filed.

ANALYSIS

At issue in this case is whether Wayne County Government has discretion under the Access to Public Records Act to exempt from disclosure the hourly time records requested by Elvin E. Fowl, II.

1. The Access to Public Records Act (APRA)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.

Further, APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *Id.* There is no dispute that Wayne County Government (“County”) is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. *See* Ind. Code § 5-14-3-2(q)(6).

Unless otherwise provided by statute, any person may inspect and copy the County’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a).

Under APRA, *public record* means:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r). Here, the parties and this Office agree that requested records are *public records* as defined under APRA.

Still, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

Here, the crux of the dispute is applicability of the disclosure exception that allows a public agency, at its discretion, to withhold the personnel files of a public employee.

2. Personnel Files of Public Employees

Under APRA, a public agency has the discretion to refuse to disclose personnel records to anyone other than the employee or his representative. *See* Ind. Code § 5-14-3-4(b)(8).

Similar to pay stubs or salary warrants, time sheets are not typically a part of an employee's personnel file. Instead, they are almost always contained in a finance or payroll file, which is mutually exclusive from a personnel file.

This Office has long advised that time sheets are disclosable under APRA minus any confidential information, which can be redacted.

Here, Fowl requested less than six months' worth of those materials so it is not a matter of a lack of specificity. But the number of hours a public employee works is most definitely ripe for public inspection. Traditionally, payroll records are kept in a finance or payroll department and not in a human resources file and should be released upon request.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Wayne County Government should release time sheets of its employees upon request so long as that request is reasonably particular.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the right.

Luke H. Britt
Public Access Counselor